

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

**CHAPTER 247**

## **HOUSE BILL 2190**

AN ACT

AMENDING SECTIONS 49-241.02 AND 49-242, ARIZONA REVISED STATUTES; RELATING  
TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-241.02, Arizona Revised Statutes, is amended to  
3 read:

4 49-241.02. Maximum payment for aquifer protection permit fees;  
5 definitions

6 A. ~~The department shall annually determine maximum fees for aquifer~~  
7 ~~protection permit action applications that are submitted by an applicant~~  
8 ~~pursuant to section 49-241 by calculating the permit hours multiplied by the~~  
9 ~~hourly rate. Maximum fees shall be listed in the annual fee schedule that is~~  
10 ~~posted on the department's web site and made available on public request by~~  
11 ~~the department pursuant to section 49-241. The department may specify~~  
12 ~~maximum fees that are based on the sector or permit action, or both.~~

13 ~~B.~~ A. The maximum fees for processing, ISSUING OR DENYING permit  
14 action applications shall be the lesser of the amount calculated in  
15 subsection A of this section or seventy-five thousand dollars. The  
16 applicable maximum fee for any application submitted before April 28, 2000  
17 shall be reduced by the amount of the payments made by the applicant to the  
18 department before April 28, 2000 to process the application, but the total  
19 fee cap reduction shall not exceed sixteen thousand dollars. The maximum  
20 fees for processing applications other than permit action applications shall  
21 be the lesser of the amount calculated in subsection A of this section or:

22 1. FOR AN INDIVIDUAL OR AREA-WIDE AQUIFER PROTECTION PERMIT, ONE  
23 HUNDRED THOUSAND DOLLARS.

24 2. FOR AN APPLICATION FOR A COMPLEX MODIFICATION TO AN INDIVIDUAL OR  
25 AREA-WIDE AQUIFER PROTECTION PERMIT, ONE HUNDRED THOUSAND DOLLARS.

26 ~~1.~~ 3. For the CLEAN closure of facilities A FACILITY without AN  
27 aquifer protection permits PERMIT, thirty-five thousand dollars.

28 ~~2.~~ 4. For A standard applications APPLICATION to modify an individual  
29 or area-wide AQUIFER PROTECTION permit, fifteen thousand dollars.

30 ~~C.~~ B. Each permit action application submitted by the applicant is  
31 subject to a maximum fee and the form of the permit action application  
32 selected by the applicant shall be the basis for the fee. THE MAXIMUM FEES  
33 PRESCRIBED IN SUBSECTION A OF THIS SECTION APPLY for a ANY PENDING permit  
34 action application submitted to the department after April 28, 2000, BEFORE  
35 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION AND the maximum fee FEES  
36 shall be determined based on the fee schedule that is in effect at the time  
37 the department deems the permit action application to be administratively  
38 complete. The applicable maximum fee shall be specified in the notice of  
39 administrative completeness that the department provides for that permit  
40 action application. For a permit action application deemed administratively  
41 complete before April 28, 2000, the department shall specify the maximum fee  
42 in a supplemental notice PRESCRIBED IN SUBSECTION A OF THIS SECTION SUPERSEDE  
43 ANY MAXIMUM FEE SPECIFIED BY THE DEPARTMENT IN ANY LETTER DATED BEFORE THE  
44 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION. THE DEPARTMENT SHALL  
45 NOTIFY THE APPLICANT BY LETTER OF ANY CHANGE IN THE MAXIMUM FEE FOR AN

1 APPLICATION. THE NOTICE SHALL BE SENT WITHIN SIXTY DAYS AFTER THE EFFECTIVE  
2 DATE OF THIS AMENDMENT TO THIS SECTION.

3 C. NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION, AN APPLICANT  
4 MAY REQUEST THAT THE DEPARTMENT WAIVE THE APPLICABLE MAXIMUM FEE FOR  
5 PROCESSING AN APPLICATION FOR A PERMIT ACTION. ON REQUESTING THE WAIVER, THE  
6 APPLICANT AGREES TO PAY THE TOTAL DIRECT COSTS INCURRED BY THE DEPARTMENT IN  
7 PROCESSING THE APPLICATION AND THE DEPARTMENT SHALL PROCESS THE APPLICATION  
8 FOR A PERMIT ACTION.

9 D. If the department contracts with a consultant under section 49-203,  
10 an applicant may request that the department expedite the application review  
11 by requesting that the department use the services of the consultant and  
12 agreeing to pay to the department the costs of the consultant's services  
13 regardless of the other provisions of this section.

14 E. The department shall review the revenues derived from and expenses  
15 incurred for processing permit action applications through June 30, 2004 2009  
16 to determine the adequacy of the maximum fees, and by August 31, 2004 2009,  
17 the department shall issue a report to the legislature on its findings.

18 F. For THE purposes of this section:

19 ~~1. "Annual fee schedule" means the hourly rate charged for services~~  
20 ~~provided by the department for a particular fiscal year pursuant to section~~  
21 ~~49-241, subsection E and the maximum fees for those services.~~

22 ~~2.~~ 1. "Complex modification" means, for purposes of the mining  
23 sector, any of the following:

24 (a) Any new tailing impoundment, leach pad or stockpile, waste rock  
25 pile, or process solution impoundment or conveyance required to have an  
26 individual permit under this article, unless this new facility is within an  
27 approved passive containment capture zone under section 49-243, subsection  
28 G, paragraph 1.

29 (b) The expansion of the footprint of any tailing impoundment, leach  
30 pad or stockpile, waste rock pile, or process solution impoundment or  
31 conveyance permitted under this article if the expanded facility is not  
32 located within a passive containment capture zone under section 49-243,  
33 subsection G, paragraph 1, and the expansion either:

34 (i) Requires expansion of the pollutant management area.

35 (ii) Extends over a geologic unit of higher hydraulic conductivity  
36 than the original facility, unless the original facility is lined and the  
37 same liner is extended to cover the entire expansion area.

38 (iii) Extends into another drainage.

39 ~~3. "Hourly rate" means the fee that is charged for department~~  
40 ~~services, that is calculated on an annual basis and that is specified in the~~  
41 ~~annual fee schedule pursuant to section 49-241, subsection E.~~

42 ~~4.~~ 2. "Maximum fee" means the maximum amount the department is  
43 authorized to charge for services for a permit action application or other  
44 permit services.

1       ~~5. "Notice of administrative completeness" means a document that is~~  
2 ~~issued by the department and that notifies the applicant that all necessary~~  
3 ~~documents and information have been submitted by the applicant to the~~  
4 ~~department.~~

5       ~~6.~~ 3. "Permit action" means:

6       (a) Issuance of an individual or area-wide AQUIFER PROTECTION permit  
7 to operate or to close.

8       (b) Issuance of a complex modification of an individual or area-wide  
9 AQUIFER PROTECTION permit.

10       (c) Issuance of a clean closure approval.

11       (d) ISSUANCE OF A STANDARD MODIFICATION OF AN INDIVIDUAL OR AREA-WIDE  
12 AQUIFER PROTECTION PERMIT.

13       ~~(d)~~ (e) Denial of any application.

14       (f) PROCESSING ANY PERMIT ACTION APPLICATION REQUEST THAT THE  
15 APPLICANT WITHDRAWS.

16       ~~7. "Permit action application" means an application for:~~

17       ~~(a) An individual or area-wide permit to operate.~~

18       ~~(b) Significant amendment to an individual or area-wide permit.~~

19       ~~8. "Permit hours" means the seventy-fifth percentile calculated of the~~  
20 ~~number of hours to complete individual and area-wide permits within a~~  
21 ~~particular sector that are issued within a rolling four year period,~~  
22 ~~beginning with fiscal year 1995-1996 through fiscal year 1998-1999.~~

23       ~~9. "Sector" means a category of permit for either dry well,~~  
24 ~~industrial, mining or wastewater.~~

25       G. The department shall adopt a rule to define "complex modification"  
26 for other nonmining aquifer protection permit sectors.

27       Sec. 2. Section 49-242, Arizona Revised Statutes, is amended to read:

28       49-242. Procedural requirements for individual permits; annual  
29 registration of permittees; fee

30       A. The director shall prescribe by rule requirements for issuing,  
31 denying, suspending or modifying individual permits, including requirements  
32 for submitting notices, permit applications and any additional information  
33 necessary to determine whether an individual permit should be issued, and  
34 shall prescribe conditions and requirements for individual permits.

35       B. Each owner of an injection well, a land treatment facility, a dry  
36 well, an on-site wastewater treatment facility with a capacity of more than  
37 three thousand gallons per day or a facility which discharges to navigable  
38 waters to whom an individual OR AREA-WIDE permit is issued shall register the  
39 permit with the director each year and pay an annual registration fee FOR  
40 EACH PERMIT based on the TOTAL daily discharge of pollutants pursuant to  
41 subsection F of this section.

42       C. Each owner of a surface impoundment, a facility which adds a  
43 pollutant to a salt dome formation, salt bed formation, underground cave or  
44 mine, a mine tailings pile or pond, a mine leaching operation, a sewage or  
45 sludge pond or a wastewater treatment facility to whom an individual OR

1 AREA-WIDE permit is issued shall register the permit with the director each  
2 year and pay an annual registration fee FOR EACH PERMIT based on the TOTAL  
3 daily influent of pollutants pursuant to subsection E of this section.

4 D. Pending the issuance of individual OR AREA-WIDE aquifer protection  
5 permits, each owner of a facility that is prescribed in subsection B or C of  
6 this section that is operating on September 27, 1990 pursuant to the filing  
7 of a notice of disposal or a groundwater quality protection permit issued  
8 under title 36 shall register the notice of disposal or the permit with the  
9 director each year and shall pay an annual registration fee FOR EACH NOTICE  
10 OF DISPOSAL OR PERMIT based on the TOTAL daily influent or discharge of  
11 pollutants as prescribed by subsection E of this section.

12 E. The annual registration fee shall be determined as follows:

13 Discharge or Influent Per Day Under the Permit  
14 or Notice of Disposal

(In gallons)	Annual Fee
3,000 to 9,999	\$ 25
10,000 to 99,999	100
100,000 to 999,999	1,000
1,000,000 to 9,999,999	<del>3,000</del> 5,000
10,000,000 or more	<del>5,000</del> 8,500

21 F. FOR A SITE WITH MORE THAN ONE PERMIT SUBJECT TO THE REQUIREMENTS  
22 OF THIS SECTION, THE OWNER OR OPERATOR OF THE FACILITY AT THAT SITE SHALL PAY  
23 THE ANNUAL REGISTRATION FEE PRESCRIBED BY SUBSECTION E OF THIS SECTION BASED  
24 ON THE PERMIT THAT COVERS THE GREATEST GALLONS OF DISCHARGE OR INFLUENT PER  
25 DAY PLUS AN ANNUAL REGISTRATION FEE EQUAL TO THE LESSER OF THE AMOUNT  
26 PRESCRIBED BY SUBSECTION E OF THIS SECTION OR ONE THOUSAND DOLLARS FOR EACH  
27 ADDITIONAL PERMIT.

28 F. G. The director shall prescribe the procedures to register the  
29 notice of disposal or permit and collect the fee under this section. The  
30 director shall deposit all monies collected under this section in the water  
31 quality fee fund established by section 49-210 and may authorize expenditures  
32 from the fund to pay the reasonable and necessary costs of administering the  
33 registration program.

34 Sec. 3. Requirements for enactment; two-thirds vote

35 Pursuant to article IX, section 22, Constitution of Arizona, this act  
36 is effective only on the affirmative vote of at least two-thirds of the  
37 members of each house of the legislature and is effective immediately on the  
38 signature of the governor or, if the governor vetoes this act, on the  
39 subsequent affirmative vote of at least three-fourths of the members of each  
40 house of the legislature.

APPROVED BY THE GOVERNOR MAY 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2004.